

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SHAWN MIDDLETON	:	DETERMINATION
	:	DTA NO. 817893
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the Year 1995.	:	

Petitioner, Shawn Middleton, 165-30 Highland Avenue, Jamaica, New York 11432-3563, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the year 1995.

A small claims hearing was held before Allen Caplowaith, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on January 24, 2002 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Susan Parker).

The parties were allowed time to file briefs and to submit additional documentation in this matter. The final brief was received on April 10, 2002 and it is this date that commences the three-month period for the issuance of this determination.

ISSUES

- I. Whether petitioner is properly entitled to claim "head of household" filing status.

II. Whether petitioner is properly entitled to claim dependent exemptions for his four children.

FINDINGS OF FACT

1. On January 4, 1999, the Division of Taxation (“Division”) issued a Notice of Additional Tax Due to Shawn Middleton (hereinafter “petitioner”). Said notice asserted additional New York State personal income tax for 1995 of \$745.00, additional New York City personal income tax for 1995 of \$356.00, plus interest of \$254.57, for a total due of \$1,355.57. The additional taxes were computed thereon as follows:

	<u>Claimed Amount</u>	<u>Adjustment Amount</u>	<u>Corrected Amount</u>
Federal Adjusted Gross Income	\$29,066.00	\$2,230.00 ¹	\$31,296.00
New York Adjusted Gross Income	29,066.00	2,230.00	31,296.00
New York Deduction	8,150.00	-1,550.00	6,600.00
Dependent Exemptions	4,000.00	-4,000.00	0.00
New York Taxable Income	16,916.00	7,780.00	24,696.00
New York State Tax	879.00	705.00	1,584.00
New York State Household Credit	40.00	-40.00	0.00
Total New York State Tax	839.00	745.00	1,584.00
New York City Resident Tax	541.00	356.00	897.00

	<u>New York State</u>	<u>New York City</u>
Revised Total Tax	\$1,584.00	\$897.00
Tax Previously Stated	839.00	541.00
Net Tax Due	745.00	356.00

The Division’s basis for the above adjustments was explained therein as follows:

Information from the Internal Revenue Service indicates that they adjusted your federal taxable income.

¹The Division’s representative was unable to explain the nature of or basis for this adjustment

The line numbers indicated in the computation section of this document correspond to the line numbers on Form IT-201 New York State resident tax return.

The federal adjustment changed your filing status from head of household to single. Therefore, your New York filing status has been changed accordingly.

A federal change in filing status has resulted in a change to your standard deduction.

The allowance for exemptions on your New York return has been corrected to include the federal adjustment.²

Since your adjusted gross income (federal) is over \$28,000, you are not allowed a household credit.

2. Subsequently, petitioner filed a Request for Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services. Accordingly, on February 16, 2000, a conciliation conference was held. As a result thereof, the conferee issued a Conciliation Order on June 2, 2000 which denied petitioner's request and sustained the Notice of Additional Tax Due.

3. On June 27, 2000, petitioner filed a petition for a hearing with the Division of Tax Appeals wherein he alleged that the Division erred in "disallowing me to put my children down as dependents even though I believe with all my heart, that I gave 50% of their total care payments for year ending Dec. 1995."

4. During 1995, petitioner's former wife, who was unemployed, resided with their four children in an apartment separate from where petitioner resided. Petitioner's contribution toward the children's support consisted entirely of child support payments of \$117.00 per week. Additionally, his former wife received payments from the New York State Department of Social

² The federal audit reduced petitioner's allowable dependent exemptions from four claimed to zero.

Services of \$400.00 per month for food stamps and \$91.50 semi-monthly, which she put toward her monthly rent of \$550.00. No explanation was provided respecting the nature or purpose of the \$91.50 payments

SUMMARY OF THE PARTIES' POSITIONS

5. Petitioner maintains that he furnished over 50% of the support for his four children.

To establish this, he was allowed time subsequent to the hearing to submit documentation to this effect. It is noted that such documentation was not forthcoming.

6. The Division's representative's position is that the Federal changes respecting the disallowance of the four dependent exemptions claimed by petitioner for his children and the change of his filing status from "head of household" to "single" should stand. However, since she was unable to determine the nature of, or basis for, the income adjustment of \$2,230.00, she took the position that this adjustment should properly be canceled.

CONCLUSIONS OF LAW

A. Tax Law § 659 requires that where changes are made to a taxpayer's return for Federal purposes, the taxpayer is required to report such changes to New York State within 90 days after the final determination of such changes. In the instant matter, petitioner failed to report the Federal changes to New York State. Accordingly, the Division acted properly in issuing the January 4, 1999 Notice of Additional Tax Due.

B. Tax Law § 607(b) provides that "an individual's marital or other status . . . shall be the same as his marital or other status for purposes of establishing the applicable federal income tax rates."

C. Internal Revenue Code § 2(b) provides that, in order to claim head of household filing status for Federal purposes, petitioner must maintain as his home, a household, which

constitutes, for more than one-half of the taxable year, the principal place of abode of his children. Since his children resided with his former wife for the entire year 1995, petitioner is not entitled to claim head of household filing status.

D. Internal Revenue Code § 152(a) requires that petitioner must provide more than one-half of his children's total support for 1995 in order to claim them as dependents. Review of the hearing record shows that petitioner has failed to establish that he had met this requirement. This, coupled with the fact that New York State disallowed petitioner's claimed dependent exemptions as the result of a Federal change, leads to the conclusion that petitioner is not properly entitled to claim a dependent exemption for any of his children for calendar year 1995.

E. As conceded by the Division's representative, the Federal adjustment increasing petitioner's income by \$2,230.00 is hereby canceled (*see*, Finding of Fact "6").

F. The petition of Shawn Middleton is granted to the extent provided in Conclusion of Law "E", and except as so granted, said petition is, in all other respects denied. The Division is hereby instructed to adjust the Notice of Additional Tax Due dated January 4, 1999, so as to be consistent with the determination rendered herein.

DATED: Troy, New York
July 3, 2002

/s/ Allen Caplowaith
PRESIDING OFFICER